

Husman, Karen

From: Amy Drought <amy.lakejulia@gmail.com>
Sent: Wednesday, June 17, 2020 3:20 AM
To: Husman, Karen; Cromwell, Nicole
Cc: Jeffrey Griffin; Amy Drought-Griffin
Subject: [EXTERNAL] City Variance 1316 - O'Malley and Virginia Lane
Attachments: Griffin Findings City Variance 1316.docx

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Dear Ms. Husman,

We own property at 2211 Oak Street directly south of the subject property. We are writing to object to the three variance requests. As detailed below and in the attached, we don't believe that the request meets the required approval criteria and therefore should not be approved. We kindly ask that this email and attachment be included for the record.

Summary of our argument

Variances should only be granted in those unique cases where an applicant cannot develop a piece of property according to the existing standards without incurring a hardship, due to unique conditions that set them apart from other properties in the same district.

This is stated in city code Sec 27-1506 (a) Authority: The city board of adjustment shall have the authority to grant a variance from the terms of this chapter in specific cases where it is found that the granting of the variance will not be contrary to the public interest and where because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the chapter would result in unnecessary hardship"

These variances are not necessary for the applicant to develop his property. Currently, the property is divided into three separate lots with more than enough area to support three single-family residences. There is nothing unique or particular about this property that prevents the applicant from doing this. This is a large flat piece of land of regular shape with no restrictions such as steep slopes or floodplains which would prevent the applicant from meeting the required regulations. It has access to public streets, sewer, and water. It is no different than the surrounding properties. It faces no unique development challenges.

Instead of building three residences that would comply with all required standards, the applicant now wants to build four single-family residences which he unable to do unless he receives these variances. These are not insignificant requests: the four lots do not meet the minimum lot area and the townhomes exceed the maximum building coverage and also encroach into the required setback from the centerline of Virginia Lane.

The applicant previously requested and received variances for his property on Virginia Lane to build a large garage and master bedroom above. This proposal, which abuts our back property line, exceeded the required maximum building coverage, and encroached into the required rear yard setback. Again, in this situation, there was nothing unique about his property which prevented him from meeting the existing standards - he could have reduced the size of his addition or planned more creatively to meet the standards. However, we did not submit any formal objection at the time.

Two important reasons for lot coverage and building setback standards are to promote open space and prevent encroachment of structural bulk on surrounding properties. If the current variances are approved, we will be affected by

encroaching development on *both* our north and east property lines. In addition, the public, including the large walking and biking community, will be impacted by the reduced setback from Virginia Lane.

The applicant asserts that his request should be evaluated according to the proposed new N3 zoning standards, which are more lenient. We acknowledge that although this is the direction the City is moving, these standards have not yet been adopted; he is legally bound to comply with the standards that are in place when he submits his application. Further, even if the application could use these proposed standards as the benchmark, his proposal as designed would still not meet the required setback from Virginia Lane, and it would still exceed the maximum building coverage.

Conclusion

Zoning regulations protect the property rights and values of not only owners but also neighbors and the larger community. As further detailed in our attached findings, these three standards: minimum lot area, maximum lot coverage and required setback from the centerline of Virginia Lane help protect the public safety and welfare of the neighborhood, promote the vision for the existing R-96 zoning district and the proposed new N3 zoning district, and also uphold the vision of the Highland Neighborhood Plan.

We fully support the applicant's right to develop his property but believe that no hardship situation exists to warrant relief from the standards. In fact, the applicant has a unique opportunity to redevelop one of the last large infill pieces of property close to the city center, within walking distance to schools, parks, and businesses.

Thank you for the opportunity to comment.

Jeff Griffin and Amy Drought

**Findings addressing Variance Approval Criteria
City Variance 1316**

Sec. 27-1506 (d) City board of adjustment, before it grants a variance it shall determine:

1. *That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;*

Findings: There is nothing peculiar about this property which sets it apart from any of the other properties in the same district causing a hardship for the applicant. The property is currently divided into three separate lots with more than enough area to support three single family residences. This is a large flat piece of land with a regular shape with no restrictions such as steep slopes, floodplains or unstable soils which would prevent the applicant from meeting the required regulations. It has access to public streets, sewer and water.

2. *That a literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other tracts in the same district;*

Findings: The applicant does not need these variances to enjoy the same rights as other property owners in the same zoning district. The applicant is easily able to develop this property with three single family residences in the way that all the surrounding properties in the same zoning district have done. The existing three lots are of similar size and shape as surrounding properties in the same zoning district.

3. *That granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other land in the same district;*

Findings: The applicant should not be granted relief from all of the development standards that everyone else has to meet. The applicant has already received a variance for his master bedroom and garage directly behind us on Virginia Lane. If these new variances are granted, the applicant would again receive a special privilege at the expense of surrounding properties and the neighborhood.

4. *That the granting of the variance will be in harmony with the general purpose and intent of this chapter and with the comprehensive plan;*

Findings: The granting of these variances will be in conflict with the general purpose and intent of this chapter and with the comprehensive plan as stated in Section 27 -102 Purpose. The purpose of the zoning code speaks to the importance of these standards for maintaining the character of each zoning district, stabilizing property values and promoting the public's health, safety and general welfare. Further, Section 27-103 Scope states that these standards should be regarded as the *minimum* requirements for the protection of the public health, safety and welfare.

Minimum lot area and maximum building coverage. Minimum lot area and building coverage standards are important for maintaining open space, creating a buffer between properties, and reducing structural bulk and impervious surfaces. The City has determined that these standards are important for maintaining the character of the R-96 and proposed N3 zoning districts as well as protecting property values in the neighborhood. As stated in our email, we have been negatively impacted by the applicant's earlier development which abuts our back property line. If approved, these variances will continue to chip away those development standards which uphold the vision and intent of the R-96 zoning district and supported by the Highland Neighborhood Plan which designates this property and surrounding properties single family residential.

Discussion of existing zoning standards of R-96 zoning district vs. proposed zoning district N3. The applicant asserts that because the proposed new zoning district N3 does not have a minimum lot area requirement and proposes a more lenient building coverage requirement, he should not have to meet the existing R-96 zoning standards which are more stringent. However, since the applicant submitted his variance application in June, he is legally bound by the existing standards.

The City cannot approve relief to existing standards based on future standards that may or may not be adopted. Besides not being legally possible, this reasoning is simply not fair to the neighboring properties. There is no absolute security that these new zoning standards will be adopted, despite the momentum in that direction. If the applicant wants his application to be reviewed under these new standards, then he needs to wait until the new zoning code is adopted.

Further, even under the provisions of the new zoning ordinance, the applicant's proposal as designed would still exceed lot coverage requirements, and would still not meet the required centerline setback from Virginia Lane – see below.

Centerline setback requirements from Minor Arterial streets. Street centerline setbacks are important for creating buffers to enhance visibility and safety between structures and busy streets for the protection of not only vehicular traffic, but also pedestrian and bicycle traffic. In addition, since minor arterial streets are often improved and expanded, centerline setback requirements ensure that there will be adequate space to allow that to happen if needed in the future.

O'Malley and Virginia Lanes have high walking and biking populations and are a main route to our neighborhood schools, Highland Elementary and Senior High School. The setback from the centerline of Virginia Lane is important to ensure the continued safety of this route to school and for the neighborhood biking and walking community.

The applicant asserts that they should not have to comply as there are several non-conforming structures nearby that already encroach into the setback. This is not a valid argument for granting relief. If an applicant could receive relief from any standard based on the presence of a pre-existing non-conforming structure or use, there would never be a need to meet a regulation and the City would be forever granting variances. This is a slippery slope and delegitimizes the City's planning process.